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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

10 UNITED STATES OF AMERICA,                                           } Case No.: 2:19-mj-00392-NJK  
11                                                                           } Plaintiff,                                                           }  
12                                                                           } vs.                                                                   }  
13 CHIVAS GRAVES,                                                   } Defendant                                                           }  
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16 COMES NOW, Defendant CHIVAS GRAVES, by and through his counsel of record,  
17 DUSTIN R. MARCELLO, ESQ., of the law firm of PITARO & FUMO, CHTD., hereby  
18 submits the attached Points and Authorities in support of Defendant's Motion Pre-plea  
19 Calculation of Criminal History

20 This Motion is made and based upon all the papers and pleadings on file herein, the  
21 attached points and authorities in support hereof, and oral argument at the time of hearing, if  
22 deemed necessary by this Honorable Court.

23 DATED: October 25, 2019

25 **PITARO & FUMO, CHTD.**

26                                                                           }  
27                                                                           }  
28 /s/ Dustin R. Marcello, \_\_\_\_\_  
Dustin R. Marcello, Esq.  
Nevada Bar No. 10134

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2                   **MEMORANDUM OF POINTS AND AUTHORITIES**

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5                   **I.**

6                   **STATEMENT OF FACTS**

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8                   On May 29, 2019 a Criminal Complaint was filed against Chivas Graves alleging one  
9 (1) Count of Conspiracy to Distribute a Controlled Substance in violation of 21 U.S.C.  
10 §846(a)(1) and 841 (b)(1)(A)(viii). The Parties are contemplating a plea but there is an open  
11 question whether Mr. Graves qualifies as a career offender and the effect of his criminal history  
12 on the potential guideline range. Accordingly, it is respectfully requested that United States  
13 Department of Parole & Probation prepare a pre-plea calculation of Mr. Graves criminal history  
14 category so that the Parties may successfully resolve the case.

15

16                   **II.**

17                   **LEGAL ARGUMENT**

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19                   A presentence investigation may be initiated prior to entry of a guilty plea or nolo  
20 contendere or prior to the establishment of guilt. See, Fed. R. Crim. P. 32.

21                   Counsel requires a pre-plea presentence report to determine whether Mr. Graves is  
22 potentially eligible for either Career Offender or Armed Career Criminal status.

23                   Counsel understands that Mr. Graves has prior felony convictions, however, Counsel  
24 cannot accurately calculate whether Mr. Graves qualifies as a Career Offender or for the Armed  
25 Career Criminal ("ACCA") sentencing enhancements without the information that would be  
26 provided in the Pre-Plea PSR. Mr. Graves' eligibility for Career Offender and the ACCA will  
27 drastically impact his sentencing exposure, potential negotiations, and his decision as to how he  
28 should proceed in this matter. In addition, the timing of Mr. Graves' prior convictions could  
impact his sentencing guideline range and criminal history score. A pre-plea presentence report

1 will promote judicial economy and could greatly expedite the manner in which this case is  
2 resolved. Furthermore, Mr. Graves consents to the pre-plea presentence investigation.  
3

4 Counsel for Mr. Graves has spoken to the Government, and the Government does not  
5 oppose the instant motion.  
6

7 Therefore, undersigned counsel respectfully requests this Court issue an Order directing  
8 the United States Department of Parole & Probation to conduct a pre-plea presentence  
9 investigation on Mr. Graves.  
10

### 11                   **III.** 12                   **CONCLUSION**

13                  Based on the foregoing, Defendant asks this Court to grant his Motion to Conduct a Pre-  
14 Plea Presentence Report. Defendant further requests this Court order        United States  
15                  Probation to conduct a pre-plea presentence investigation and prepare a  
16 report for Mr. Graves.  
17

18                  DATED: October 25, 2019  
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20                  **PITARO & FUMO, CHTD.**  
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22                  /s/ Dustin R. Marcello,  
23                  Dustin R. Marcello, Esq.  
24                  Nevada Bar No. 10134

25                  IT IS SO ORDERED.  
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27                    
28                  NANCY J. KOPPE  
29                  UNITED STATES MAGISTRATE JUDGE

30                  DATED: October 28, 2019